



Signed and Filed: June 23, 2008

A handwritten signature in dark ink, appearing to read "T. E. Carlson", is written over a horizontal line.

THOMAS E. CARLSON
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re) Case No. 07-31389 TEC
RODRIGO CELEDIO and) Chapter 7
CATHERINE CELEDIO,)
Debtors.)

MEMORANDUM RE U.S. TRUSTEE'S MOTION TO DISMISS CASE

The United States Trustee moves to dismiss Debtors' bankruptcy case under section 707(b) on the basis that (1) a presumption of abuse arises, and (2) the totality of circumstances demonstrate abuse. For the reasons stated below, the motion is denied.

A presumption of abuse arises if a debtor's "current monthly income" less permitted expenses and multiplied by 60 is \$10,950 or more. 11 U.S.C. § 707(b)(2)(A)(i)(II). "Current monthly income" is

the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor's spouse receive) without regard to whether such income is taxable income, derived during the 6-month

1 period ending on . . . the last day of the calendar month
2 immediately preceding the [petition] date. . . .
3 11 U.S.C. § 101(10A). I construe this to mean pay received for
4 work performed in the six-month period ending on the last day of
5 the month before the bankruptcy is filed. So construed, the
6 couple's average gross monthly income is \$12,788. The United
7 States Trustee acknowledges that Debtors' monthly expenses total
8 \$12,639.¹ Thus, Debtors' gross monthly income less expenses is
9 \$149. This amount multiplied by 60 is \$8,940, which is less than
10 the \$10,950 necessary to create a presumption of abuse.

11 The court also determines that this case is not abusive under
12 the totality of the circumstances. 11 U.S.C. § 707(b)(3)(B); In re
13 Price, 353 F.3d 1145 (9th Cir. 2004). While Debtors have steady
14 jobs, they have only a small net monthly surplus on a budget the
15 United States Trustee admits is not extravagant. (Memo of Points &
16 Authorities, at p.7: 11-12). Debtors may no longer be working
17 overtime, but the court can find no published decision finding such
18 a choice to constitute substantial abuse. Nor did Debtors engage
19 in any other inappropriate behavior. There is no evidence that
20 Debtors obtained cash advances or purchased consumer goods on
21 credit exceeding their ability to repay, or that Debtors engaged in
22 eve-of-bankruptcy purchases.

23 ****END OF MEMORANDUM****

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26 ¹ The United States Trustee calculated Debtors' monthly
27 expenses as \$12,586. On the record at the hearing, counsel for the
28 United States Trustee acknowledged that this sum does not include
the \$53 per month Debtors pay for insurance required by their
mortgage. (See Official Form 22A, ¶ 42).

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Court Service List

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